

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

ALPHONSO CLARK,

Defendant and Appellant.

C087028

(Super. Ct. No. 98F10531)

Defendant Alphonso Clark appeals a trial court ruling revoking his outpatient status and returning him to Napa State Hospital. He contends the trial court erred in admitting hearsay statements at the outpatient revocation hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1999, the trial court committed defendant to the Department of Mental Health after finding him not guilty by reason of insanity of criminal charges. (*People v. Clark* (Mar. 21, 2018, C083763) [nonpub. opn.].) The trial court placed him on outpatient status in January 2017. The trial court also referred defendant to the Golden Gate

Conditional Release Program (Golden Gate Program), an outpatient program that treats individuals who are found not guilty by reason of insanity and determined to be appropriate for outpatient treatment. Dr. Molly Brown is Golden Gate Program's community program director; she oversees the clinic, reviews all reports to the courts and the state hospital, supervises clinicians, carries out therapy sessions and home visits, and assesses risk. Dr. Brown supervises Dr. Elizabeth Cale, who became defendant's primary clinician at Golden Gate Program in December 2017.

On January 6, 2018, Dr. Brown concluded defendant was not manageable on an outpatient basis, and she requested that police take defendant into custody. Dr. Brown and Dr. Cale then wrote a letter to the trial court requesting that the trial court permanently revoke defendant's outpatient status pursuant to Penal Code<sup>1</sup> section 1608.

Dr. Brown testified at the revocation hearing about the events leading to defendant's return to custody. During a team meeting on January 3 or 4, Dr. Cale expressed concern about defendant's behavior, "specifically that he was presenting as more paranoid and irritable and somewhat disorganized than he usually does." Dr. Cale told Dr. Brown defendant said his roommate was watching and correcting him and people were "out to get him sent back to the hospital." Dr. Brown and Dr. Cale met with defendant, and they were able to calm him down once he had processed some of his feelings. Defendant met with Dr. Cale on January 5 due to increasing anxiety and discomfort with another housemate. At that time Dr. Brown was performing consistent risk assessments to ensure defendant could continue being treated in the community, and she believed he could.

In the early morning hours of January 6, defendant made multiple calls to the Golden Gate Program's 24-hour hotline. The hotline is a safeguard available to patients

---

<sup>1</sup> Unspecified statutory references are to the Penal Code.

who are “dealing with something” or feeling upset. Defendant spoke to Dr. Suarez, the clinician on hotline duty. During the calls defendant had “pressured” speech and made “disorganized” statements about a woman who was trying to have sex with him against his will. Dr. Suarez performed a risk assessment and directed defendant to go to bed, to not call anyone for the rest of the night, and to call her back at 11:00 a.m.

Defendant called Dr. Suarez again at 6:00 a.m. and told her he was going to an Alcoholics Anonymous or Narcotics Anonymous meeting. Dr. Suarez told Dr. Brown what had happened, and they decided to meet at defendant’s house at 8:00 a.m.

When Dr. Brown and Dr. Suarez arrived at defendant’s house, he was sitting on his couch. At first defendant did not remember calling the hotline, although he eventually did. Defendant was more disorganized than usual, said he had not been sleeping much, and continued to be paranoid about his roommates.

Dr. Brown then checked defendant’s medications, which are in bubble packs labeled by the day of the week they are supposed to be taken. Dr. Brown noticed defendant had only intermittently taken his medications from January 2 to 6; on some days he did not take any of his medication, and on other days he took his morning medication but not his evening medication. Dr. Brown asked defendant what happened with his medication, but he was unable to explain.

Dr. Brown concluded defendant could not be safely and effectively treated in the community, and she asked the San Francisco Police Department to detain defendant. Dr. Brown identified the reasons for her decision: defendant’s increasing symptoms over the week, including paranoia and disorganization; defendant’s irritability and sleeplessness; and, the “biggest piece,” defendant’s medication noncompliance. Dr. Brown also noted defendant’s history of aggressive and violent behavior when he is decompensated from his mental illness.

Defendant testified on his own behalf. He sometimes starts his medication regimen on a day not corresponding to the day on the packaging, and he sometimes takes

his medication out of the order indicated on the packaging. His medication regimen includes medications for blood pressure and Crohn's disease, and medical noncompliance can result in adverse health effects.

The trial court expressed concern, even accepting the possibility defendant started taking his medication on a day other than the day listed on the packaging, defendant seemed to have been taking his medications intermittently. Relying on the doctors' increasing concern about defendant's behavior from defendant's initial meeting with Dr. Cale on January 2, the subsequent meetings between defendant and Drs. Cale and Brown, defendant's calls to the hotline, and finally defendant's medication noncompliance, the trial court granted the petition to revoke defendant's outpatient status.

## DISCUSSION

Defendant claims the trial court erred in admitting hearsay testimony by Dr. Brown as to: (1) Dr. Cale's statements that defendant's symptoms had been escalating over the course of the week of January 2; and (2) Dr. Suarez's statements about defendant's calls to the hotline and his leaving his house despite her directions to him. Defendant acknowledges he did not object to the admission of the statements at trial. "[T]he failure to object to the admission of expert testimony or hearsay at trial forfeits an appellate claim that such evidence was improperly admitted." (*People v. Stevens* (2015) 62 Cal.4th 325, 333.) Therefore, defendant forfeited the claim on appeal.

Anticipating our conclusion defendant forfeited the claim on appeal, defendant makes the alternative argument his trial counsel was constitutionally ineffective by failing to object to the admission of hearsay evidence. We disagree.

"To establish ineffective assistance of counsel, a petitioner must demonstrate that (1) counsel's representation was deficient in falling below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient representation subjected the petitioner to prejudice, i.e., there is a reasonable probability that, but for counsel's failings, the result would have been more favorable to the

petitioner. [Citations.] “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” ’ ’ ( *In re Jones* (1996) 13 Cal.4th 552, 561.) If a defendant makes an insufficient showing on either one of these components, his ineffective assistance claim fails. ( *People v. Holt* (1997) 15 Cal.4th 619, 703; see *Strickland v. Washington* (1984) 466 U.S. 668 [80 L.Ed.2d 674].) “If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.” ( *Strickland*, at p. 697 [80 L.Ed.2d at p. 699].) Here, defendant has not established prejudice.

A trial court properly revokes a person’s placement in an outpatient program under section 1608 when the preponderance of the evidence shows the person (1) requires extended inpatient treatment, or (2) refuses to accept further outpatient treatment and supervision. (§ 1608; *People v. DeGuzman* (1995) 33 Cal.App.4th 414, 419.)

Dr. Brown met with defendant and personally observed defendant’s increased irritability and paranoia. After defendant’s calls to the hotline, Drs. Brown and Suarez went to defendant’s house and Dr. Brown personally observed that defendant appeared more disorganized than usual, acknowledged he had not been sleeping well, and continued to be paranoid about his roommates. Dr. Brown then personally checked defendant’s medication and concluded defendant was medication noncompliant. Dr. Brown asked defendant for an explanation, but defendant was unable to provide one.

In sum, each of the justifications Dr. Brown provided to support her request to revoke defendant’s outpatient status -- increasing paranoia and disorganization, irritability, medication noncompliance, and history of aggression and violence when decompensated from his mental illness -- was based on properly admitted nonhearsay evidence. Even without the hearsay statements in Dr. Brown’s testimony, there was no reasonable probability that the outcome of the revocation hearing would have been more favorable to defendant. Accordingly, there was no prejudice under *Strickland* and defendant has not established ineffective assistance of counsel.

DISPOSITION

The order is affirmed.

/s/  
Robie, J.

We concur:

/s/  
Raye, P. J.

/s/  
Renner, J.